

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MAURICE ROGERS,

Plaintiff(s)

vs.

HARRY RUSSELL,

Defendant(s)

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Case Number: 1:02cv79-SJD

District Judge Susan J. Dlott

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

. . . that Petitioner's remaining claim alleged in Ground Four of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is hereby DENIED with prejudice.

A certificate of appealability shall not issue with respect to the claim alleged in Ground Four, which has been addressed on the merits, because petitioner has failed to make a substantial showing of the denial of a constitutional right based on these claims. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). However, a certificate of appealability shall issue with respect to the claims alleged in Grounds One through Three, previously dismissed with prejudice by Order filed September 16, 2003 on the ground that they are barred from review by the one-year statute of limitations set forth in 28 U.S.C. § 2244(d) (*see* Docs. 6, 11); under the two-part test established in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), and applicable to claims barred from review on procedural grounds, "jurists of reason would find it debatable" (1) "whether this Court is correct in its procedural ruling" that Grounds One through Three are time barred, and (2) "whether the petition states a viable claim of the denial of a constitutional right" as the issues presented in Grounds One through Three are "adequate to deserve encouragement to proceed further," *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). *See also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court shall certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would be taken in "good faith," and therefore GRANT petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

5/27/04

JAMES BONINI, CLERK

s/Stephen Snyder  
Deputy Clerk